vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1032 OF 2002

Jalinder Bhimrao Sonawane
r/o.:Bhagwatgalli, Deolaligaon
Nashik Road, Nashik ... Appellant

V/s.

The State of Mahrashtra
at the instance of
P.S.O., Nashik Road stn, Nashik ... Respondent

None for Appellant
Mr.D.R. More, APP, for Respondent

CORAM: **V.G. PALSHIKAR, Ag. C.J. & SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 22, 2006**

ORAL JUDGMENT (PER PALSHIKAR, Acg. C.J.):

. Being aggrieved by the judgment and order dated 6.7.2000 passed by the III Additional Sessions Judge, Nashik in Sessions Case No.210 of 1999 convicting the appellant accused under section 302 of the Indian Penal Code to suffer rigorous imprisonment for life and fine, the appellant named above has preferred this appeal.

2. When the matter was called out, the advocate for the accused was absent. However, taking into consideration that the accused is in jail since 1999, we thought it fit to take up the matter for adjudication on merits with the assistance of the learned Assistant Public Prosecutor. We have scrutinized the record and reappreciated the evidence on record and the prosecution

case as disclosed by this scrutiny and reappreciation stated briefly is thus:

On 29.4.1999, the accused married the victim Ratna and they started living thereafter in village Dhamangaon. After staying for a month or so in that village, they came to Deolaligaon in search of job. The relationship with them was no so cordial. The accused doubted the character of his wife Ratna and there used to be quarrels because of this lingering doubt.

On 22.9.1999, between 2.30 and 3 pm, a quarrel took place between the man and the wife and after exchange of heated arguments according to the prosecution, the accused poured kerosene on the body of Ratna and put her on fire. Ratna started shouting and therefore people in the vicinity came there and she was taken to Bytco hospital. Her condition was serious. Since the matter was of burning, the police were informed and Special Executive Magistrate came to the hospital to record the dying declaration of Ratna. Thereafter, she died. She has stated in the dying declaration as also while talking to the persons taking her to the hospital regarding her being put on fire by the accused. The police investigated the matter. The accused was arrested and ultimately he was chargesheeted under section 302 of the Indian Penal Code. The prosecution examined 11 witnesses to prove its case. The learned trial Judge on appreciation of the evidence on record,

came to the conclusion of guilt and consistent with that conclusion sentenced the accused to suffer imprisonment for life. It is this order dated 6.7.1982 that is under challenge in this appeal.

3. PW1 Dr.Patil examined the victim on admission to the hospital and finding her seriously burnt informed the police. On arrival of the Special Executive Magistrate, he examined the patient and certified that she was in physical and mental condition to give statement. He made an endorsement to that effect on the document which was executed as dying declaration. He has proved his endorsement. He had examined the victim after that recording of declaration was over and again certified that even after recording of the statement the witness was in fit mental and physical condition.

PW2 Kailas is a Panch who approved the Panchanama of the scene of offence. From the Panchanama, it is seen that a stow was lying and the place was smelling of kerosene.

PW3 Ramkrishna is the father of the victim of Ratna. He rushed to the hospital on learning of the incident and was told by the victim herself that she has been put on fire by her husband, the present accused appellant. He therefore, deposed to that effect before the learned Sessions Judge. He has been exclusively crossexamined and it was suggested to him that his daughter the victim

Ratna was a staunch devotee of good and many a times, she used to be afflicted seriously by her devotion. (*angaat yene* - possessed by divine power) and on the date of incident she was so possessed and therefore while preparing food, she fell on the stow and sustained the burns. PW3 has stoutly denied all these suggestions and has maintained that he was specifically told by his daughter that the daughter was put on fire by the accused.

PW4 is Panch who approved the seizure of the clothes of the accused. He approved that the clothes were burnt at some places. This is obvious from the fact that it was the accused himself who put his wife into the vehicle for being transported to the hospital. The dying declaration Exhibit 32 was recorded by PW8, Special Executive Magistrate and he has approved the same. The dying declaration is recorded in the prescribed format. It bears the endorsement by the Doctor that the patient was in conscious condition to make a statement. Such certificate was again taken after the recording of dying declaration was over. Both the certificates have been approved by the Doctor as made by him. The dying declaration is therefore properly recorded and proved. It cannot therefore, be assailed on any of the technical grounds. The disclosures made by the wife in the statement are natural. There is no other evidence on record to suggest that she was in any manner prompted to do what she did. There is therefore, no reason why this

dying declaration should be rejected.

PW5, PW6 and PW7 are three witnesses who were in the vicinity of the scene of offence and rushed to the spot immediately on hearing shouts of Ratna. They all deposed that they heard Ratna shouting that she was burnt by the accused, her husband. On all material particulars, they corroborate each other. There is therefore, enough corroborated evidence to the dying declaration which is duly proved by PW1 and PW3. PW9 is the Investigating Officer and PW10 is Dr.Varsha who deposed that the death was caused due to burns.

4. We have also perused the impugned judgment. The leaned trial Judge has considered all the evidence in its proper perspective and has recorded a finding of guilt. Our own appreciation of evidence as done above, also leads us to an independent but same conclusion of the guilt of the accused. We agree with the findings recorded by the learned trial Judge and we on reappreciation confirm the same. In our opinion, none of the grounds mentioned in the memo of Appeal are made out from the evidence that is considered by us. In our opinion, therefore, the appeal fails and is accordingly dismissed.